IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7566 OF 2006

Shri Shaikh Shamsuddin Taher & 3 ors.] .. Petitioners

Versus

1. The State of Maharashtra & 7 ors.] .. Respondents

Mr. G.N. Salunke for the petitioners.

Mr. C.R. Sonawane, AGP, for the respondents No.1,4 & 5.

Mr. Rahul P. Walvekar for the respondents No.6 to 8.

CORAM: S.B. MHASE &
D.G. KARNIK, JJ.

DATED: 07TH AUGUST, 2007

P.C. :

. Heard.

2. The petitioners have approached this Court challenging the order passed by the Divisional Commissioner, Pune Division, Pune, dated 2nd November, 2006, wherein, while exercising the power under Section 145(1A) of the Bombay Village Panchayats Act, 1958, the Commissioner has refused to dissolve the Gram Panchayat, even though more than half of the members of the Gram Panchayat have vacated their seats by resignation. Instead, he has directed to hold elections to fill up

the vacancies.

2. What we find is that except for a period of six months when the period of the Panchayat ends or terminates, Section 11 permits holding of election of vacant seats, more specifically in view of the provisions of Section 11(2) & (3) of the Bombay Village Panchayats Act. From the language of Section 145(1A), we also find that the legislature has used the word "may" stating that the Government may dissolve the Gram Panchayat if more than half the members of the Gram Panchayat have vacated their seats. Therefore, the Section is not mandatory. The option is left to the Government who may or may not dissolve the Grampanchayat. Here, the Commissioner has selected not to dissolve, but to conduct the election. The election will have to be conducted by the State Election Commission and, therefore, the appropriate authorities may approach the State Election Commission for the said purpose. However, the contention raised by the petitioner challenging the order dated 2nd November, 2006, passed by the Commissioner that the Commissioner should have dissolved the Grampanchayat is not tenable if the provisions of the Bombay Village Panchayats Act, 1958 are perused.

3. Petition is without any merit and we reject the Petition. Interim relief granted is hereby vacated.

Sd/-
[D.G. KARNIK, J.]

Sd/-
[S.B. MHASE, J.]